

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

R. DIANNE VARICK,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 14883-19 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	

ORDER AND DECISION

This matter is before the Court on respondent's Motion for Summary Judgment, filed January 3, 2020. Respondent seeks to sustain a Notice of Determination Concerning Collection Action(s) Under Section 6320 or 6330 of the Internal Revenue Code dated July 10, 2019, upholding proposed levy action for the taxable year 2015.¹

There are no genuine issues of material fact in this case, and the Court concludes that respondent is entitled to judgment as a matter of law as provided herein.

Petitioner resided in Florida at the time the petition in this case was filed.

A. **Background**

The record establishes and/or the parties do not dispute the following.

Petitioner filed a Federal income tax return for the 2015 tax year but failed to pay the balance due. The return was filed on May 30, 2017, and corresponding assessments were made on July 24, 2017, at which time a notice of balance due was also sent to petitioner. On August 2, 2017, petitioner submitted to the Internal Revenue Service (IRS) an initial request for an installment agreement, but such was rejected, and amounts remained unpaid.

On August 13, 2018, respondent issued to petitioner a Notice CP90, Intent to seize your assets and notice of your right to a hearing, for the 2015 tax year, reflecting an unpaid balance of \$71,961.21. Petitioner responded with a timely Form 12153, Request for a Collection Due Process or Equivalent Hearing, in which she disputed the levy action and expressed interest in a collection alternative in the form of an installment agreement in the amount of \$1,000 per month.

¹ Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended, and Rule references are to the Tax Court Rules of Practice and Procedure.

She also simultaneously submitted a Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, and a Form 433-B, Collection Information Statement for Businesses, pertaining to her wholly-owned real estate entity Property Gems, LLC.

Subsequently, a Settlement Officer (SO) of the IRS Office of Appeals sent to petitioner a letter dated February 26, 2019, scheduling a telephone hearing for April 2, 2019. In preparation for that meeting, the SO reviewed the financial information provided by petitioner for purposes of calculating an appropriate minimum payment of \$1,050 for an installment agreement. The hearing was then held as scheduled, and discussion focused on the installment agreement. Petitioner advised that she could not afford even \$1,000 per month but felt obligated to offer at least that amount. Based on those discussions petitioner undertook to provide an updated Form 433-A, and the SO received the revised document on April 11, 2019. Using the updated figures and applicable allowable standards, the SO computed a disposable income of \$1,913 and an installment agreement amount of \$1,100 per month. A further telephone conversation with petitioner to review the numbers followed on May 13, 2019. Petitioner advised that she could not commit to the payment amount, so the SO explained that the case would be closed with issuance of a notice of determination.

At that juncture, the SO, through review of files and transcripts, had confirmed that requirements of applicable law and administrative procedure had been met by verifying the timeliness of assessment of amounts in dispute and verifying that appropriate collection notices had been sent to petitioner. The SO balanced the need for efficient collection of taxes with the legitimate concern of petitioner that any collection be no more intrusive than necessary by finding that no alternative collection action would be available or proper at that time given petitioner's declination to challenge the underlying liabilities and failure to enter into an offered collection alternative consistent with the financial information submitted.

On July 10, 2019, respondent issued to petitioner the aforementioned Notice of Determination Concerning Collection Action(s) Under Section 6320 or 6330 of the Internal Revenue Code, sustaining the proposed levy action for 2015.

On August 12, 2019, petitioner filed the petition commencing this case. In that document, petitioner expressed disagreement with the notice of determination. She also noted continued interest in an installment agreement but reiterated that she could not pay the amount proposed by the SO. Respondent then filed the Motion for Summary Judgment, presently before the Court, on January 3, 2020. By Order dated January 6, 2020, petitioner was directed to file an objection, if any, to respondent's motion, on or before January 27, 2020. To date, nothing has been received from petitioner.

B. Discussion

1. Summary Judgment

Summary judgment serves to "expedite litigation and avoid unnecessary and expensive trials." Florida Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Either party may move for summary judgment upon all or any part of the legal issues in controversy. Rule 121(a). The

Court may grant summary judgment only if there are no genuine disputes or issues of material fact. Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

Respondent, as the moving party, bears the burden of proving that no genuine dispute or issue exists as to any material fact and that respondent is entitled to judgment as a matter of law. FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000); Bond v. Commissioner, 100 T.C. 32, 36 (1993); Naftel v. Commissioner, 85 T.C. at 529. In deciding whether to grant summary judgment, the factual materials and the inferences drawn from them must be considered in the light most favorable to the nonmoving party. FPL Group, Inc. v. Commissioner, 115 T.C. 559; Bond v. Commissioner, 100 T.C. at 36; Naftel v. Commissioner, 85 T.C. at 529. The party opposing summary judgment must set forth specific facts which show that a question of genuine material fact exists and may not rely merely on allegations or denials in the pleadings. Rule 121(d); Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Grant Creek Water Works, Ltd. v. Commissioner, 91 T.C. 322, 325 (1988); King v. Commissioner, 87 T.C. 1213, 1217 (1986); Shepherd v. Commissioner, T.C. Memo. 1997-555. When the moving party has carried its burden, however, the party opposing the summary judgment motion must do more than simply show that “there is some metaphysical doubt as to the material facts.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The party opposing the motion “may not rest upon the mere allegations or denials of his pleading, but * * * must set forth specific facts showing there is a genuine issue for trial.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Where the record viewed as a whole could not lead a reasonable trier of fact to find for the non-moving party, there is no “genuine issue for trial”. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. at 587.

Under Rule 121(d), if the adverse party does not respond to the motion for summary judgment, then this Court may enter a decision where appropriate against that party. See King v. Commissioner, 87 T.C. at 1217; Shepherd v. Commissioner, T.C. Memo. 1997-555. Petitioner has not responded to the motion for summary judgment. The Court could grant respondent’s motion on that ground alone. However, even if the Court did not rely on that basis, the record in this matter shows that respondent is entitled to summary judgment on the merits of the case.

2. Hearings Under Section 6330

Section 6321 imposes a lien in favor of the United States upon all property and rights to property of a taxpayer where there exists a failure to pay any tax liability after demand for payment. The lien generally arises at the time assessment is made. Sec. 6322. Section 6323, however, provides that such lien shall not be valid against any purchaser, holder of a security interest, mechanic’s lienor, or judgment lien creditor until the Secretary files a notice of lien with the appropriate public officials. Section 6320 then sets forth procedures applicable to afford protections for taxpayers in lien situations.

Section 6320(a) establishes the requirement that the Secretary notify in writing the person described in section 6321 of the filing of a notice of lien under section 6323. This notice required by section 6320 must be sent not more than 5 business days after the notice of tax lien is filed and must advise the taxpayer of the opportunity for administrative review of the matter in the form of a hearing before the IRS Office of Appeals. Sec. 6320(a). Section 6320(b) and (c)

grants a taxpayer who so requests the right to a fair hearing before an impartial Appeals officer, generally to be conducted in accordance with the procedures described in section 6330(c), (d), and (e).

Similarly, section 6331(a) authorizes the Secretary to levy upon property and property rights of a taxpayer liable for taxes who fails to pay those taxes within 10 days after a notice and demand for payment is made. Section 6331(d) provides that the levy authorized in section 6331(a) may be made with respect to “unpaid tax” only if the Secretary has given written notice to the taxpayer 30 days before the levy. Section 6330(a) requires the Secretary to send a written notice to the taxpayer of the amount of the unpaid tax and of the taxpayer’s right to a section 6330 hearing at least 30 days before the levy is begun.

If a section 6320 or 6330 hearing is requested, the hearing is to be conducted by the IRS Office of Appeals, and, at the hearing, the officer conducting the conference must verify that the requirements of any applicable law or administrative procedure have been met. Sec. 6330(b)(1), (c)(1). The taxpayer may raise at the hearing “any relevant issue relating to the unpaid tax or the proposed levy”. Sec. 6330(c)(2)(A). The taxpayer may also raise challenges to the existence or amount of the underlying tax liability at a hearing if the taxpayer did not receive a statutory notice of deficiency with respect to the underlying tax liability or did not otherwise have an opportunity to dispute that liability. Sec. 6330(c)(2)(B); see Montgomery v. Commissioner, 122 T.C. 1 (2004).

This Court has jurisdiction under section 6330 to review the Commissioner’s administrative determinations. Sec. 6330(d); see Iannone v. Commissioner, 122 T.C. 287, 290 (2004). Where the underlying tax liability is properly at issue, the Court reviews the determination de novo. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). Where the underlying tax liability is not at issue, the Court reviews the determination for abuse of discretion. Id. at 182.

a. Underlying Tax Liability

The record in this proceeding indicates that, throughout the administrative process, petitioner has at no time sought to challenge the underlying tax liabilities for the 2015 tax year. The general rule in this Court is that, on appeal of a collection determination, the Court will limit its review to those issues properly raised during the collection hearing. Giamelli v. Commissioner, 129 T.C. 107, 114-115 (2007); Magana v. Commissioner, 118 T.C. 488, 493 (2002). See also Rule 331(b)(4) (advising that any issue not raised in the petition shall be deemed conceded).

Accordingly, the Court will not consider any adjustment to the amount of the underlying 2015 liabilities and will review respondent’s determination for abuse of discretion. Goza v. Commissioner, 114 T.C. at 182. Whether an abuse of discretion has occurred depends upon whether the exercise of discretion is without reasonable basis in fact or law. Freije v. Commissioner, 125 T.C. 14, 23 (2005); Ansley-Sheppard-Burgess Co. v. Commissioner, 104 T.C. 367, 371 (1995).

b. Spousal Defenses and Challenges to the Appropriateness of Collection Actions

Similarly, petitioner has not at any time raised spousal defenses or challenges to the appropriateness of collection actions. Thus, the Court does not consider those matters here. See Giamelli v. Commissioner, 129 T.C. at 114-115; Magana v. Commissioner, 118 T.C. at 493; see also Rule 331(b)(4).

c. Collection Alternatives

During the collection proceeding and insofar as might concern any collection alternative, petitioner's initial hearing request had indicated interest in an installment agreement. The petition in this case had also indicated a desire for a collection alternative.

Both installment agreements and offers in compromise are forms of collection alternative. As a prerequisite for consideration or approval by the IRS of such types of collection alternative, or of the administrative relief afforded by currently not collectible status, it is generally incumbent upon the taxpayer to provide requested financial information, for example to permit evaluation of ability to pay. See, e.g., secs. 6159, 7122, I.R.C.; Kindred v. Commissioner, 454 F.3d 688, 697 (7th Cir. 2006); Olsen v. United States, 414 F.3d 144, 151 (1st Cir. 2005); Murphy v. Commissioner, 125 T.C. 301, 315 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006); Wright v. Commissioner, T.C. Memo. 2012-24. Similarly, IRS guidelines with respect to collection alternatives direct that the taxpayer must be in current compliance with filing and estimated payment obligations. E.g., McLaine v. Commissioner, 138 T.C. 228, 243 (2012); Giamelli v. Commissioner, 129 T.C. at 115-116; Taylor v. Commissioner, T.C. Memo. 2009-27. Moreover, it is not an abuse of discretion for the IRS Office of Appeals to decline to consider an installment agreement or offer in compromise where no specific collection alternative proposal is ever placed before the reviewing officer. See, e.g., Kindred v. Commissioner, 454 F.3d at 696; Kendricks v. Commissioner, 124 T.C. 69, 79 (2005). Stated otherwise, it is the obligation of the taxpayer, not the reviewing officer, to start negotiations regarding a collection alternative by making in the first instance a specific proposal.

Regarding installment agreements specifically, section 6159(a) authorizes the Secretary to enter into written agreements allowing taxpayers to pay tax in installment payments if the Secretary deems that the "agreement will facilitate full or partial collection of such liability." See also Thompson v. Commissioner, 140 T.C. 173, 179 (2013). The decision to accept or reject installment agreements lies within the discretion of the Commissioner. Sec. 301.6159-1(a), (c)(1)(i), Proced. & Admin. Regs. The Court does not normally make an independent determination of what would be an acceptable alternative. See Murphy v. Commissioner, 125 T.C. at 320. If Appeals or settlement officers follow all statutory and administrative guidelines and provide a reasoned and balanced decision, the Court will not reweigh the equities. Thompson v. Commissioner, 140 T.C. at 179.

Here, the record reflects that the SO reviewed and took into account both the initial and updated financial information submitted by petitioner, as well as guidelines set forth in the Internal Revenue Manual, and reached a reasoned and supported conclusion. Moreover, the

figure ultimately offered by the SO was within \$100 of the amount proposed by petitioner herself. In sum then, precedent establishes that no abuse of discretion occurred on the facts presented in this scenario.

d. Verification of Procedures

It is well settled that no particular form of verification is required; that no particular document need be provided to taxpayers at a hearing conducted under section 6330; and that Forms 4340, Certificate of Assessments, Payments, and Other Specified Matters, and transcripts of account may be used to satisfy the requirements of section 6330(c)(1). Roberts v. Commissioner, 118 T.C. 365, 371 n.10 (2002), aff'd, 329 F.3d 1224 (11th Cir. 2003); Nestor v. Commissioner, 118 T.C. 162, 166 (2002); Lunsford v. Commissioner, 117 T.C. 183 (2001). The Form 4340, transcripts, and materials that are referenced in and/or attached as exhibits to respondent's motion for summary judgment and accompanying declaration, along with the statements of the officer in the notice of determination, show that required assessment and collection procedures were followed.

The Court concludes that there are no genuine issues of material fact for trial and that respondent's determination to proceed with collection was not an abuse of discretion.

C. Conclusion

Drawing all factual inferences against respondent, the Court concludes that there are no genuine issues of material fact in this case and that respondent is entitled to judgment as a matter of law.

Finally, in reaching the conclusions described herein, the Court has considered all arguments made and, to the extent not mentioned above, finds them to be moot, irrelevant, or without merit.

Premises considered, it is

ORDERED that respondent's Motion for Summary Judgment, filed January 3, 2020, is granted. It is further

ORDERED AND DECIDED that respondent may proceed with collection action for taxable year 2015, as determined in the notice of determination, dated July 10, 2019, upon which this case is based.

(Signed) Peter J. Panuthos
Special Trial Judge

ENTERED: **MAR 10 2020**